

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 PA-01 PRS-01 H-02

INT-05 CIAE-00 COME-00 FRB-03 INR-07 NSAE-00 XMB-02

OPIC-03 LAB-04 SIL-01 INRE-00 NSCE-00 SSO-00 USIE-00

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TO SECSTATE WASHDC NIACT IMMEDIATE 6381

C O N F I D E N T I A L LIMA 06739

E.O. 11652: GDS

TAGS: EINV, EGEN, EMIN, PFOR, PE, US

SUBJECT: MARCONA NATIONALIZATION - GOP TEAM

UPHOLDS CONFISCATORY ARTICLE 8 OF DECREE LAW

FOR DELIVERY OPENING OF BUSINESS AUGUST 19.

REFS: A. LIMA 6607; B. LIMA 6129

1. SUMMARY - MARCONA OFFICIALS HELD CIVIL BUT UN-PRODUCTIVE MEETING AFTERNOON AUGUST 18 WITH GOP TEAM. IN ESSENCE, GOP TEAM CONFIRMED THAT D.L. 21228 IS LAW OF THE LAND, THAT GOP TEAM IS NOT EMPOWERED TO NEGOTIATE ACROSS THE BOARD, AND CONFIRMED MARCONA READING THAT ARTICLE 8 OF D.L. MEANS THAT SAN NICOLAS PROPERTY REVERTED TO STATE FREE OF ANY PAYMENT TO MARCONA. ONLY RECOURSE FOR MARCONA IS THROUGH THE COURTS. GOP TEAM SAID THAT REMAINING PROPERTY WAS THAT WHICH HAD BEEN EXPROPRIATED AND FOR WHICH COMPENSATION WOULD BE STUDIED. IN EFFECT, GOP TOLD MARCONA IT COULD BRING SUIT HERE IF IT DISAGREES WITH PERUVIAN GOVERNMENT ACTIONS. GIVEN TENOR OF
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CONVERSATIONS, MARCONA OFFICIALS MADE NO NEW PRESENTATION.

ONLY POINT OF POSSIBLE INTEREST TO GOP IS SALES AND SHIPPING, BUT DISCUSSION ON THIS POINT WAS VERY INCONCLUSIVE.

2. OUTCOME OF FIRST MEETING IS DISAPPOINTING INDICATION THAT GOP IS NOT PREPARED TO BACK AWAY FROM ITS LEGAL ARGUMENTS AND INTENDS TO TAKE MOST OF MARCONA'S ASSETS FOR NOTHING, AND IS PREPARED TO DISCUSS ONLY SMALL FRACTION OF TOTAL WORTH USING ALL THE LEGAL MECHANISMS IT HAS SET IN PLACE. MARCONA TEAM INTENDS TO TRY ONCE AGAIN TOMORROW, TUESDAY, AT 3:00 P.M. MEETING BUT HAS LITTLE HOPE THAT THESE DISCUSSIONS WILL BEAR FRUIT.

3. AMBASSADOR IMMEDIATELY MADE DEMARCHE TO GARCIA BEDOYA BY TELEPHONE TO EXPRESS DISAPPOINTMENT AND TO REMAIN HIM OF CONSEQUENCES OF FAILURE TO NEGOTIATE. AMBASSADOR EMPHASIZED HIS WILLINGNESS TO DISCUSS ISSUE WITH FOREIGN MINISTER, PRIME MINISTER, OR EVEN PRESIDENT, IF SECRETARY GENERAL'S CONSULTATIONS INDICATED THIS WERE DESIRABLE. GARCIA BEDOYA SAID HE UNDERSTOOD SERIOUSNESS OF THIS DEVELOPMENT AND SAID HE WOULD INFORM DE LA FLOR IMMEDIATELY. IN MEANTIME, WE SUGGEST DEPARTMENT CALL IN AMBASSADOR ARCE TO EXPRESS ITS CONCERN TO HIM. END SUMMARY.

4. FURTH SUMMARIZED MEETING'S PRINCIPAL POINTS OF DISCUSSION AS FOLLOWS:

A) POWERS OF GOP TEAM - DE LA PUENTE TWICE AND DELGADO ONCE MADE SET SPEECHES WHICH EMPHASIZED CLEARLY THAT QUOTE NEITHER THE TEAM NOR ANY OTHER COMMITTEE IN PERU CAN CHANGE LAWS OF PERU AND THAT MARCONA'S ONLY REMEDY IS IN THE PERUVIAN COURTS. END QUOTE

B) MARCONA'S INITIAL POSITION - FURTH THANKED GOP FOR RECEIVING THEM, NOTING THAT MARCONA WAS IN PERU AT ITS REQUEST TO RECEIVE CLARIFICATION ON ASPECTS OF NATIONALIZATION WHICH WERE UNCLEAR TO IT?

C) ART. 8 OF D.L. 21228 - FURTH SAID THAT DASSO CONFIRMED MARCONA'S LAWYERS' INTERPRETATION THAT CONFIDENTIAL

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ART. 8 MEANS THAT ALL THE ASSETS OF SAN NICOLAS REVERT TO STATE FREE OF PAYMENT, THAT THE GOP HAD A RIGHT TO RESCIND THE CONTRACT AND THAT NO COMPENSATION IS DUE MARCONA FOR SAN NICOLAS;

D) RESERVES - CONCERNING NONCOMPLIANCE WITH THE CONTRACT ON MAINTENANCE OF RESERVES, GOP TEAM NOTED THAT MINISTRY OF ENERGY AND MINES EXPERTS CONTEND THAT 70

MILLION RESERVE LEVEL WAS NOT MAINTAINED. WHEN FURTH NOTED THAT MARCONA DID NOT ACCEPT THIS CONTENTION, PERUVIANS SAID THAT MARCONA SHOULD SUE IN LOCAL COURTS;

E) IMPORTATION OF MATERIALS AND SUPPLIES - FURTH STRESSED THAT MARCONA HAS NO DESIRE TO HAMPER OPERATION AND HAD REQUESTED ITS STAFF TO STAY TO KEEP OPERATION GOING. FURTH, HOWEVER, EMPHASIZED THAT SEIZURE OF CARGO IN CASE OF "ELIZABETH LYKES" AND PDNEING CASES OF OTHER SHIPS WAS CONTRARY TO COMMERCIAL PRACTICE AND NOT ACCEPTABLE TO HIS COMPANY. PERUVIANS SAID THEY WOULD DISCUSS LEGALITIES OF THESE ISSUES AT TOMORROW'S MEETING;

F) SALES AND SHIPPING - FURTH NOTED THAT MANY SERIOUS CHARGES OF IMPROPRIETY HAD BEEN LEVELLED AT MARCONA CARRIERS AND MARCONA INTERNATIONAL AND ASKED PERUVIANS IF THEY ARE INTERESTED IN SALES AND SHIPPING CONTRACTS. PERUVIANS REPLIED THAT ACTIONS OF MARCONA'S CORPORATE AFFILIATES HAD QUOTE NOT BEEN IN THE NATIONAL INTEREST UNQUOTE BUT THERE IS NO BLACKLIST OF ANY COMPANY. FURTH SUGGESTED THAT GOP REVIEW SALES AND SHIPPING PROPOSAL WHICH MARCONA MADE TO GOP ON JUNE 12 TO SEE IF SOME OR ANY OF THIS PROPOSAL IS OF INTEREST TO GOP. PERUVIANS SAID THEY WOULD DO SO.

G) LEGAL MECHANISMS - COMPTON NOTED THAT PERUVIANS SAID THAT THE MULTISECTORAL COMMISSION IS NOW DECIDING WHICH ITEMS OF MARCONA PROPERTY SHOULD BE CONSIDERED UNDER HEADING OF EXPROPRIATION AND WILL THEN PLACE INITIAL VALUE ON THEM. THIS PROCESS IS DUE TO BE COMPLETED BY END OF MONTH.

5. AMBASSADOR REACHED FOREIGN MINISTRY SECRETARY GENERAL
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GARCA BEDOYA BY TELEPHONE EVENING AUGUST 18. HE TOLD GARCIA BEDOYA THAT HE REGARDED RESULTS OF CONVERSATION AS VERY DISAPPOINTING. HE REMINDED GARCIA BEDOYA THAT HE HAD EMPHASIZED THAT NEED WAS FOR NEGOTIATIONS, NOT CONVERSATIONS, AND THAT SECRETARY GENERAL HAD AGREED WITH HIM AND ASSURED HIM THAT WAS GOP INTENTION. INSTEAD WHAT HAD TAKEN PLACE WAS A CLEAR STATEMENT TO MARCONA THAT NO NEGOTIATIONS WERE POSSIBLE WITH RESPECT TO 85 PERCENT OF THE OPERATION RELATING TO THE CONTRACT. FURTHER, ALTHOUGH THERE WERE CLAUSES IN THE CONTRACT RELATING TO PROCEDURES TO BE FOLLOWED IN EVENT OF NONCOMPLIANCE, THESE PROCEDURES HAD NOT BEEN FOLLOWED AND MARCONA HAD BEEN GIVEN NO RECOURSE. AMBASSADOR EMPHASIZED THAT IT IS NECESSARY TO RESOLVE THIS VERY SERIOUS QUESTION, THE RESOLUTION OF WHICH IS EXTREMELY IMPORTANT FOR RELATIONS BETWEEN TWO COUNTRIES. HE SAID A WAY MUST BE FOUND FOR REAL

NEGOTIATIONS, OR THE DIRE CONSEQUENCES HE HAD DISCUSSED WITH THE FOREIGN MINISTER AND OTHERS WOULD PROBABLY OCCUR. AMBASSADOR SAID HE WAS PREPARED TO TALK TO THE FOREIGN

MINISTER, THE PRIME MINISTER OR TO THE PRESIDENT, IF SUCH IS INDICATED AND POSSIBLE IN TIME AVAILABLE, TO ONCE AGAIN REITERATE US POSITION AND THE SERIOUS CONCERN WITH

WHICH USG VIEWS THIS PROBLEM.

6. GARCIA BEDOYA SAID HE WOULD GET IN TOUCH WITH AMB. DE LA PUENTE AND MINISTER DE LA FLOR IMMEDIATELY. AMBASSADOR REITERATED THAT HE IS PREPARED TO DISCUSS THIS ISSUE AT ANY TIME WITH GOP LEADERS AND TO GO TO THEIR HOMES TO DO SO IF NECESSARY.

7. COMMENT: POSITION TAKEN BY COMMISSION IS CONTRADICTORY TO ASSURANCES WE HAD CONSISTENTLY BEEN RECEIVING FROM GARCIA BEDOYA, AND INDEED FROM FOREIGN MINISTER HIMSELF, THAT GOP RECOGNIZED THAT SOLUTION TO THIS PROBLEM LAY NOT IN RESORT TO LEGALISTIC SUPERSTRUCTURE GOP HAS ERECTED BUT IN DIRECT NEGOTIATIONS TO ARRIVE AT A PROMPT AND EFFECTIVE SETTLEMENT. HOWEVER, ALTHOUGH GARCIA BEDOYA AND OTHERS HAVE INDICATED THAT THEY UNDERSTAND CONSEQUENCES AND NEED FOR NEGOTIATIONS AND THAT THEY DO NOT DESIRE STRAINED RELATIONS WITH US, IT NOW APPEARS THAT GOP (VELASCO) MAY ONCE
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AGAIN HAVE PAINTED ITSELF INTO A CORNER WITH ROOM FOR MANEUVER EVEN FURTHER RESTRICTED BECAUSE OF FORTHCOMING NAC MEETING.

8. BETWEEN NOW AND NEXT MEETING AT 3:00 P.M. AUGUST 19, AMBASSADOR INTENDS CONTINUE MAKE INTENSIVE EFFORT TO IMPRESS ON GOP CONSEQUENCES OF FAILURE TO BEGIN SERIOUS NEGOTIATIONS ON COMPENSATION QUESTION ALONG WITH OTHER ISSUES. ACCESS TO MINISTERS MAY, HOWEVER, BE DIFFICULT OWING TO REGULARLY SCHEDULED CABINET MEETING AUGUST 19. AT SAME TIME CABINET MEETING MAY PROVIDE GOP WITH OPPORTUNITY ONCE AGAIN TO EXAMINE MARCONA QUESTION AND ALL ITS POSSIBLE IMPLICATIONS. IN THE MEANTIME, WE RECOMMEND THAT DEPARTMENT CALL IN AMBASSADOR ARCE TO INFORM HIM OF USG DISAPPOINTMENT WITH COURSE GOP HAS APPARENTLY CHOSEN, DESPITE ASSURANCES TO THE CONTRARY, AND TO REMIND HIM ONCE AGAIN OF CONSEQUENCES WE FORESEE OF FAILURE TO INITIATE REAL NEGOTIATIONS PROMPTLY.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NATIONALIZATION, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975LIMA06739
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750285-1039
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750840/aaaabjas.tel
Line Count: 220
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 LIMA 6607, 75 LIMA 6129
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 11 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 SEP 2003 by CunninFX>; APPROVED <20 OCT 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MARCONA NATIONALIZATION - GOP TEAM UPHOLDS CONFISCATORY ARTICLE 8 OF DECREE LAW
TAGS: EINV, EGEN, EMIN, PFOR, PE, US, MARCONA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006